IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

NOTICE OF MOTION NO.800 OF 2006
IN
SUIT NO.754 OF 2006

Sunita Girish Lodha ...Plaintiff
Vs.
Amit Ajit Pangam & Ors. ...Defendants

Mr.H.S.S.Murthy Advocate i/b.Mr.V.N.Tayade Advocate for the Plaintiff
Mr.Sanjay Jain Advocate with Mr.K.A.Chhotani Advocate for Defendant Nos.1 and 2
Mr.P.M.Shah Advocate for Defendant Nos.3 to 6

CORAM: SMT. ROSHAN DALVI, J.
DATE : 18TH DECEMBER, 2006.

P.C.

1. The Plaintiff and Defendant Nos.1 and 2 are partners of a Firm Balaji Developers. Defendant Nos.3 to 6 are the purchasers of two shops being Shop Nos.1 and 2 on the ground floor of the premises constructed by the Firm of Balaji Developers.

2. It is the Plaintiff's case that the Defendants 3 to 6 have not made payment of the entire consideration for shops 1 and 2 and have taken forcible possession of the said shops fraudulently from Defendants 1 and 2 under a fabricated letter of possession without making payment of the entire consideration. The Plaintiff, therefore, has sought reliefs of injunction against both these sets of Defendants as well as the appointment of the Court Receiver for the said two shops.

3. The Plaintiff has sought to show certain correspondence between the parties more specially the reply of Defendants 1 and 2 to the Plaintiff's Advocate's Notice sent in January/February, 2005 which shows only part payments made.

4. The Plaintiff has also shown the NC complaint lodged by him/her against these partners, defendants 1 and 2 as well as another NC complaint lodged by Defendants 3 to 6 against the Plaintiff. A reading of both these complaints show disputes with regard to possession and security of shop nos.1and 2.

5. The Plaintiff and Defendant nos.1 and 2 have admittedly entered into an agreement dated 16th June, 2005 in respect of both these shops. Under one agreement the total purchase price is Rs.5.16 lakhs. Under the other agreement the total purchase price is Rs.3.87 Lakhs.

6. The Defendants have shown Bank statements aggregating to Rs.5.16 Lakhs as well as Rs.3.87 Lakhs credited to the account of the Plaintiff's Firm.

7. The agreement is signed by Defendants 1 and 2 as partners of the Firm. The partners have implied authority to bind the firm. The partners will bind the firm for transactions entered into in the normal course. These transactions are for sale of shops. Therefore, they must be for sale of shops at the consideration to be paid which

would be the market price. The consideration for both these shops are stated to be Rs.5.16 Lakhs and Rs.3.87 Lakhs for shop nos.1 and 2 respectively. The entire consideration is shown to be paid to the Firm.

8. It is the Plaintiff's case that the agreement shows part payments made and balance payment to be made upon possession being given. A letter of possession, which is stated to be fabricated, has also been executed on the same date namely 16th June, 2005. The agreement and the letter both dated 16th June, 2005 seen together show the full consideration paid as substantiated by the Bank's statement.

9. It is further the Plaintiff's case that an earlier letter of possession dated 16th April, 2005 has been executed by Defendant Nos.1 and 2 in favour of Defendants 3 to 6 which is a fabricated letter. Despite that letter, however, the full payment is shown to be made. Defendants 3 to 6 are in possession of the shop Nos.1 and 2. Since the payment of the entire consideration is shown to be made, that possession cannot be disturbed pending the suit. However, since the Plaintiff prays that the part payment is only made and the rest of the payments is towards other transactions, it will be for the Plaintiff to show which other transactions took place between the Plaintiff and Defendants 3 to 6. That would be seen at the time of trial. Pending the trial third party rights in the shops cannot be created.

10. By an Ad-interim order dated 24th March, 2006 Defendants 3 to 6 have been restrained from disposing of or creating any third party rights in shop nos.1 and 2. That order shall continue in the Suit.

11. By a further order dated 10th April, 2006 directions have been passed regarding sale of Flat No.G-1 in the building constructed by the Plaintiff's Firm. The amount upon the sale of the flat is required to be deposited in the Court. If any amount is found due and payable to the Plaintiff, or further the amount shown to be payable under the agreements, appropriation can be made from the amount received from the sale of Flat No.G-1 in the building. In view of this, case for appointment of Court Receiver is not made out. Hence, following order :

O R D E R

(i). The Defendants 3 to 6 shall not deal with, or dispose of, or encumber or create third party rights in respect of Shop Nos.1 and 2.

(ii). The Plaintiff and the Defendants 1 and 2 shall endeavour to sell Flat No.G-1. The proceedings of the sale shall be deposited in this Court to the credit of this Suit.

(iii). Appropriation shall be made as per accounts being taken at the time of the Suit.

(iv). The dispute is between partners.

(v). The Plaintiff and Defendants 1 and 2 are in the business of construction. It will be in the interest of all the partners to make up accounts and have them settled.

(vi). The Parternship Deed between the Plaintiff and Defendants 1 and 2 provides for settlement of disputes between those parties by Arbitration.

(vii). The Plaintiff and Defendants 1 and 2 therefore, may refer their dispute to Arbitration or Mediation of any Businessman of their choice.

(viii). Notice of Motion disposed of accordingly.

(SMT. ROSHAN DALVI, J.)